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# PRESENTATION OF THE WORKING PAPER FOR A DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

(Submitted by the delegation of Ecuador)

## 1. Introduction

The present working paper contains the text of a draft Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on the High Seas. It is submitted to the Conference by the sponsoring delegation.

This document is based on the negotiating text prepared by the Chairman, and it includes additional ideas presented by several delegations during the July 1993 session, as well as new contributions.

The observations and proposals made during the current session have not been included in the draft because it has been considered appropriate to leave to the Chairman's judgement the evaluation of the changes that, in the light of the debates, he considers it advisable to introduce in the revision of his negotiating text.

In presenting this working paper, the sponsoring delegation has had in mind the need to facilitate that task and the proper understanding by the rest of the delegations participating in the Conference of its specific proposals, through a comprehensive text that makes it possible to appreciate the nature and scope of the instrument that, in its opinion, must be adopted in order to establish an effective conservation and management regime for the fish stocks concerned.

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* Reissued for technical reasons.

The purpose of this draft is not to supersede the negotiating text, but solely to provide the Conference with a comprehensive working paper that makes it easier for all participants to evaluate the opinions and proposals of the sponsoring delegations with a view to achieving the goal of establishing an effective conservation and management regime for such fish stocks on the high seas.

2. Explanation of the sources of the draft

The accompanying version of the text contains:

- In roman type, the paragraphs transcribed from the negotiating text elaborated by the Chairman of the Conference (A/CONF.164/13, of 29 July 1993, transformed into articles of the Convention). That constitutes the main source of the present working paper;

- In italics, certain articles and paragraphs taken from the draft Convention submitted to the Conference by the delegations of Argentina, Canada, Chile, Iceland and New Zealand (A/CONF.164/L.11/Rev.1, of 28 July 1993);

- Underlined, inputs from other sources, such as the working paper submitted by the delegations of Chile, Colombia, Ecuador and Peru (A/CONF.164/L.14, of 16 July 1993); the document on definitions presented by the delegation of the Russian Federation (A/CONF.164/L.32, of 27 July 1993); and the materials contributed by the Latin American Organization for the Development of Fisheries (OLDEPESCA) in the draft prepared for its Tenth Ministerial Conference, held at Lima, Peru, from 8 to 10 March 1994.

Part XI, Final provisions, which appears in roman type, is based (with the elimination of the paragraphs that referred to "the Area, the International Authority and the common heritage of mankind") on the provisions of part XVII of the United Nations Convention on the Law of the Sea.

Annex I (List of highly migratory fish stocks), which appears in italics, has been taken from annex I to the document of the five above-mentioned delegations, which itself reproduces annex I to the United Nations Convention on the Law of the Sea, with the exception of paragraph 17, which lists cetaceans.

Annex II (Minimum data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks), which appears in roman type, is based on annex 1 to the negotiating text, with the suggested modifications in italics or underlined, as appropriate.

Annex III (Additional precautionary measures), which appears in italics, has been taken from annex II to the draft of the five delegations.

In the table of contents, titles relating to general provisions, final provisions and annexes not reflected in the negotiating text are underlined or in italics; so are the titles that are taken from the other sources described herein.

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# DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

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# DRAFT CONVENTION ON THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS ON THE HIGH SEAS

## PREAMBLE

The States Parties to this Convention:

Recalling the provisions of Agenda 21, chapter 17, programme area C, of the United Nations Conference on Environment and Development, relating to the sustainable yield and conservation of the living resources of the high seas, which recommended the convening of an intergovernmental conference for the purpose of adopting effective measures at the subregional, regional and global levels, to ensure that high seas fishing of straddling fish stocks and highly migratory fish stocks is managed in accordance with the United Nations Convention on the Law of the Sea,

Recalling also United Nations General Assembly resolution 47/192, by virtue of which a Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened, in accordance with the mandate established at the United Nations Conference on Environment and Development,

Taking into account that the intensification of unlimited fishing of these resources on the high seas is threatening the survival of certain fish stocks and associated species, with not only serious ecological, but also serious social and economic consequences for several coastal communities that have traditionally been dependent upon fisheries,

Mindful of the urgency of establishing an efficient regime for high seas fishing of straddling fish stocks and highly migratory fish stocks, with a view to ensuring the sustainable development and optimum yield of such stocks, through conservation and management measures that include sharing of information, scientific and technological cooperation, implementation of observation, monitoring, control and enforcement measures, application of penalties in the case of infractions, and recourse to the appropriate procedures for the settlement of disputes,

Mindful also of the need to promote or reinforce, as appropriate, the functioning of regional and subregional fisheries management organizations and agreements for the application and development of the provisions of this Convention in their respective areas of competence, taking into account the particularities of each region and subregion,

Convinced that the only way to achieve these goals is to adopt legally binding rules that determine the rights, obligations and responsibilities of States when applying conservation and management measures established for high seas fishing of the stocks concerned,

Recognizing in this respect that it is necessary to coordinate the provisions on conservation that apply to the high seas and the exclusive economic zones, given that the straddling fish stocks and highly migratory fish

stocks, during part of their life cycle, are both inside and outside the zones under national jurisdiction,

Recognizing also that under the United Nations Convention on the Law of the Sea, in the exclusive economic zones coastal States have sovereign rights to explore, exploit, conserve and manage living resources; and that on the high seas, the freedom of fishing enjoyed by all States is subject, among other things, to the rights, obligations and interests of coastal States,

Have agreed as follows:

## PART I

## GENERAL PROVISIONS

### Article 1

### Definitions

1. *For the purposes of this Convention:*

*(i) "Regional fisheries management agreement" means a regional or subregional arrangement or agreement involving two or more States, including the relevant coastal State or States, for the purpose of conserving and managing straddling fish stocks or highly migratory fish stocks on the high seas;*

(ii) **"Optimum use of living resources"** means a system of exploitation of such resources that reconciles basic dietary, economic and social needs with the maintenance of the exploited stocks at levels which ensure their permanent balance without affecting the preservation of the ecosystem in which they have their habitat;

*(iii) "Fishing vessel" includes any ship or boat or other description of vessel used in or equipped for:*

*(a) Fishing, handling or processing of living resources or transporting them from where they are caught; or*

*(b) Provisioning, servicing, repairing or maintaining vessels of a fishing fleet while at sea;*

(iv) **"Maximum sustainable yield"** means the size of the yield that, according to the best scientific evidence available, represents the highest level of productivity of a given stock in stable conditions;

(v) **"Allowable catch"** means the size of the catch of a given stock that, taking into account the relevant scientific and socio-economic criteria, is established in accordance with the provisions of this Convention;

(vi) **"Catch quota"** means the share of the allowable catch, established for a regulatory area, which is allocated to a State, vessel or individual;

(vii) **"Associated species"** means species that usually accompany the target species during certain periods of their life cycle;

(viii) **"Dependent species"** means species which are interconnected by biological or ecological ties, to the point where the presence of one stock depends on that of another stock;

*(ix) "**State**" includes any regional economic integration organization to which its member States have transferred competence over matters covered by this Convention;*

(x) **"High seas fishing States"** means States that fish straddling fish stocks or highly migratory fish stocks in the high seas areas adjacent to zones under the jurisdiction of other States;

*(xi) "**Flag State**" means the State whose flag a vessel is entitled to fly;*

*(xii) "**Port State**" means the State in whose port or offshore terminal a vessel entitled to fly the flag of another State is present;*

(xiii) **"State Party"** means, as appropriate, a State Party to this Convention or to the regional fisheries management organization or agreement concerned;

(xiv) **"Coastal State"** means a State adjacent to whose zones under national jurisdiction fishing takes place on the high seas;

(xv) **"Excessive exploitation"** or **"over-exploitation"** means exploitation whose effect is that the annual increase of a stock is below the level of maximum sustainable yield, or another agreed level for the conservation of that stock designed to prevent the number of spawners from being reduced to the point where balance and survival of the stock cannot be maintained or restored;

(xvi) **"Habitat"** means the usual zone of distribution of a species, or the area or region in which a given stock is to be found during most of its life cycle;

(xvii) **"Conservation measures"** means the determination and implementation of scientific and technological criteria and methods aimed at ensuring the long-term sustainability of the fish stocks concerned, so as to maintain them at levels of permanent balance and maximum productivity. They include the selection and use of the most appropriate reference points to allow reconstitution of the fish stocks, taking into account the situation of the biomass and the ecological and environmental factors that determine it, as well as the collection, provision and evaluation of the relevant scientific, technical and statistical data;

(xviii) **"Management measures"** means measures aimed at ensuring that the exploitation of the targeted fish stocks is consistent with the goal of achieving optimum utilization of such stocks, taking into account the ecological, economic and social factors involved. These include regulation of the fishing effort through the establishment of quotas, moratoria and other limitations regarding areas, seasons and fishing gear; implementation of observation, monitoring, control and enforcement schemes; and the application of penalties in the case of infraction;

(xix) "**International conservation and management measures**" means measures adopted to that effect, in accordance with this Convention, by the relevant regional fisheries management organization or agreement, or if there is none, by the Food and Agriculture Organization of the United Nations (FAO), upon the request of the States concerned;

(xx) "**Migration**" means the movement at sea of a certain stock or of part of it, because of factors related to its life cycle (diet, reproduction or spawning, breeding, etc.);

*(xxi) "**Regional fisheries** conservation organization" means:*

*(a) A regional or subregional organization involving two or more States, including the relevant coastal State or States, whose purpose is to conserve and manage straddling fish stocks or highly migratory fish stocks on the high seas;*

(b) A maritime organization formed by two or more States of the same region or subregion, which has powers that include the establishment of conservation and management measures for the fishing of the living resources of that region or subregion.

(xxii) "**Fish**" means both the fish themselves and the molluscs, crustaceans and chelonians in the regions or subregions where these three sorts of living resources are also straddling species;

(xxiii) "**Fishing**" means the extraction of any living marine resource belonging to the category of straddling fish stocks or highly migratory fish stocks;

(xxiv) "**Straddling fish stocks**" means stocks that, while living most of their life cycle in the exclusive economic zone of a State, move temporarily to areas of the high seas adjacent to this zone or vice versa; and the fish stocks whose natural habitat comprises both the exclusive economic zone of a State and the adjacent high seas areas;

(xxv) "**Highly migratory fish stocks**" means stocks that move through large areas of the high seas and from there possibly to the exclusive economic zone of one or more States, and stocks mainly established in the exclusive economic zone of a State that move from there to large areas of the high seas;

(xxvi) "**Zones under national jurisdiction**" means the territorial sea and the exclusive economic zone;

*(xxvii) "**Exclusive economic zone**" means the exclusive economic zone as defined in article 55 of the United Nations Convention on the Law of the Sea and, for the purposes of this Convention, includes also the fishing zones within the 200-nautical-mile maximum limit;*

*(xxviii) "**Regulatory area**" means an area of the high seas in respect of which a regional fisheries conservation organization adopts conservation and*

*management measures or to which a regional fisheries conservation arrangement applies.*

2. In the cases referred to in subparagraphs (xxiv) and (xxv) of this article, the terms used apply both to a single living resources stock and to associated or dependent stocks.

## Article 2

## *Application*

*This Convention shall apply exclusively to the fishing of straddling fish stocks on the high seas and highly migratory fish stocks on the high seas, except as regards the collection and provision of information and the coordination of the conservation measures applicable to such stocks on the high seas and in the zones under national jurisdiction.*

## Article 3

## Regulated species

1. Straddling fish stocks regulated by this Convention are those which, by virtue of their nature, their usual range of distribution and their movements during their life cycle, are covered by the definition in article 1, paragraph 1 (xxiv).

2. Highly migratory fish stocks regulated by this Convention are those which, by virtue of their nature, their usual range of distribution and their movements during their life cycle, are covered by the definition in article 1, paragraph 1 (xxv).

3. Regional and subregional fisheries management organizations and, where there is none, FAO, shall establish lists of straddling fish stocks and highly migratory fish stocks that, according to the available scientific information, can be identified as such in the areas under their jurisdictions.

4. As an example, a list of highly migratory fish stocks that can be identified as such is included as annex I to the present Convention, subject to whatever lists may be established under paragraph 3 of this article.

5. The present Convention does not apply to the stocks of larger cetaceans regulated by the International Whaling Commission or any organization that may succeed it. Except as it refers to the measures established with regard to incidental catches, this Convention shall also not apply to other marine mammals whose conservation and management are regulated by special agreements.

Article 4

*Objective*

*The objective of this Convention is to establish effective measures for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, with a view to ensuring the sustainable development of such stocks through cooperation among the States concerned and their commitment to responsible fishing, thus giving effect to the relevant provisions of the United Nations Convention on the Law of the Sea.*

## PART II

## CONSERVATION AND MANAGEMENT

### Article 5

### Conservation and management measures

In order to achieve the objective of this Convention, States parties shall:

(a) On the basis of the best scientific evidence available, cooperate in the adoption of the conservation measures in the areas of the high seas adjacent to the exclusive economic zone of one or more States, which ensure the long-term sustainability of the straddling fish stocks in those areas; and to cooperate in like manner to establish measures for the conservation and optimum utilization of the highly migratory fish stocks, in both cases as qualified by relevant environmental and economic factors, taking into account the special requirements of developing States, fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) Adopt measures which may include, inter alia, as appropriate:

(i) Establishment of total allowable catches and quotas, specified by species and fishing areas;

(ii) Fishing effort limits (e.g. number and fishing capacity of vessels and fishing days);

(iii) Fish size limits or other measures to promote optimum utilization of targeted species;

(iv) Gear restrictions (e.g. minimum mesh sizes);

(v) Area and seasonal closures;

(c) Promote optimum utilization and ensure long-term sustainability of the fish stocks concerned;

(d) Take into consideration the effects on ecologically related species with a view to maintaining or restoring populations of associated or dependent species above levels at which their reproduction may become seriously threatened;

(e) Promote the development and use of environmentally safe and effective fishing techniques in order to minimize pollution, waste, discards and by-catch of untargeted species, in particular endangered species, taking into account the need to maintain biodiversity and protect multi-species ecosystems;

(f) Recognize the special requirements of developing States and promote the forms of cooperation and assistance to those States set forth in part VI of this Convention.

(g) Enhance the level of certainty in management decision-making through the collection and timely dissemination of complete and accurate data relating to fishing activities, inter alia, on position, catch, by-catch and fishing effort, as described in annex II, and information from national and international research programmes;

(h) Promote scientific research in support of fishery conservation and management measures, including continuous review of the status of stocks, abundance surveys and biological studies on targeted and non-targeted species, as well as research on oceanographic, climatic and other environmental factors that condition the ecosystems and the movements of these stocks;

(i) Formulate coherent and coordinated conservation and management measures to protect targeted stocks and ecologically related species from over-exploitation by adopting approaches which take into account the interdependence of stock components on the high seas and in areas under national jurisdiction;

(j) Ensure that conservation and management measures do not discriminate in form or fact against the fishermen of any State.

## Article 6

## Precautionary approach

1. States Parties shall, in order to protect the environment and living marine resources, apply the precautionary approach to fisheries exploitation and management in the following manner:

(a) States shall act so as to obtain and share the best available scientific evidence on which to base their conservation and management decisions. States shall take into account, inter alia, uncertainties with respect to the size and productivity of the targeted stocks, the levels and distributions of fishing mortality, the impact of fishing activities on associated and dependent species and variations in other relevant factors, including climatic, oceanic and other environmental changes;

(b) The absence of adequate scientific information shall not be used as a reason for failing to take strict measures to protect the resource;

(c) Use of the precautionary approach shall include appropriate techniques for the achievement of the established goals, including, where necessary, the application of moratoria;

(d) In cases where the status of stocks is a matter of concern, strict conservation and management measures shall be applied and shall be subject to increased monitoring in order to review continuously the status of the stocks and the efficacy of the measures, so as to facilitate revision of such measures in the light of new scientific evidence;

(e) In the case of new or exploratory fisheries, conservative catch and/or effort limits shall be established as soon as possible and shall remain in force until enough evidence is available to allow for assessment of the impact of the fishery on the long-term sustainability of the stocks and associated ecosystems.

2. Regional and subregional fisheries management organizations and, where there is none, FAO, shall be empowered to establish additional precautionary measures such as those described in annex III, with regard to either existing fisheries or newly discovered stocks.

Article 7

Collection and provision of *information*

1. States Parties *shall ensure that fishing vessels entitled to fly their flag provide them in a timely manner with such information as may be necessary in order to fulfil their obligations under this Convention and shall take appropriate measures to verify the accuracy of such information.*

2. States Parties shall cooperate directly or through regional fisheries management organizations or agreements to:

(i) Collect and exchange the scientific, technical and statistical data available to them with respect to the situation and exploitation of straddling fish stocks and highly migratory fish stocks, both on the high seas and in the zones under their jurisdiction, using for this purpose internationally agreed formats;

(ii) Include in the collection and exchange of data those related to by-catch in order to be able to take into consideration the effects of fisheries on species caught incidentally;

(iii) Develop and share information, techniques and *analytical tools* that make it possible to adopt more appropriate measures for the conservation and management of straddling fish stocks and highly migratory fish stocks, including systems for evaluating such stocks and verifying the data gathered on their status and catches;

(iv) Promote the coordination of international research and data evaluation programmes, including, when feasible, joint scientific research activities or the separate calibration of the operations and the results obtained; and bring about the establishment of a subregional, regional and global database system.

3. States Parties shall cooperate in the elaboration of detailed specifications for the application of paragraph 1, taking into account those indicated in annex II to this Convention.

## PART III

## MECHANISMS FOR INTERNATIONAL COOPERATION

### Article 8

### Minimal standards for conservation and management

1. Coastal States and States fishing on the high seas shall cooperate, in accordance with the United Nations Convention on the Law of the Sea, in the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, directly or through regional fisheries management organizations or agreements, taking into account the specific characteristics of the region or subregion. Consultations shall be initiated at the request of any interested State.

2. As a minimum, the purpose of such cooperation shall be to agree on conservation and management measures with respect to particular fish stock(s) to ensure their long-term sustainability. Such measures shall also include provisions on data exchange and surveillance, supervision and control to prevent activities that violate agreed conservation and management rules, and an effective procedure for the settlement of disputes.

3. States Parties shall enter into consultations in good faith and without delay, particularly when there is evidence that the stock(s) concerned may be under threat of over-exploitation. While differences remain, they shall act in good faith to conserve such stocks in a manner which would not constitute an abuse of rights and with due regard to the rights, interests and duties of other States.

### Article 9

### Cooperation for scientific research

1. States Parties and competent international organizations shall cooperate to promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all.

2. To this end, they shall establish mechanisms and strategies for bilateral, subregional, regional or global cooperation to carry out the provisions of article 5, paragraph (h), and article 7, paragraphs 2 and 3.

3. In the case of scientific research activities carried out by any State or international organization in areas of the high seas adjacent to zones under the jurisdiction of one or more States, the State or international organization that is carrying out research projects shall inform the relevant coastal State(s) about its objectives, methods and results; and shall facilitate, to the extent possible, the participation of the relevant State(s) in carrying out such projects.

4. States Parties and international organizations shall also promote the strengthening of the autonomous capacity for marine scientific research, particularly of developing States, through assistance which shall include, as appropriate, facilities for cooperation in improving their scientific and technological institutions, the use of appropriate methods, the availability of suitable research vessels and equipment, and instruction and training programmes for their technical and scientific staff.

## Article 10

### Cooperation through regional fisheries management organizations or agreements

1. Where a regional or subregional fisheries management organization or agreement has the mandate and competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States Parties to this Convention fishing for the stocks on the high seas and coastal States with an interest in the stocks shall discharge their duty to cooperate by participating in the work of the regional organization or agreement, in accordance with the mandate and terms of participation of that organization or agreement.

2. Regional and subregional fisheries management organizations and agreements shall be open to participation, on a non-discriminatory basis, by all States with an interest in the stock(s) concerned.

3. States with an interest in the stock(s) concerned which are not members of a regional or subregional fisheries management organization shall be encouraged to participate in the work of that organization.

4. Only those States that participate in the work of a regional fisheries management organization or agreement, or that otherwise cooperate in the application of the conservation and management measures, shall have access to the regulated fisheries.

## Article 11

### Duty to cooperate where there is no regional fisheries management organization or agreement

Where there is no subregional or regional fisheries management organization or agreement to establish conservation and management measures for particular straddling fish stock(s) or highly migratory fish stock(s), States shall enter into agreements or arrangements to ensure effective conservation and management of the stock(s) in question.

## Article 12

### General criteria for the establishment of mechanisms for cooperation

In establishing regional or subregional fisheries management organizations or agreements for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, States Parties shall determine, inter alia, the following:

(a) The fish stock(s) to which the conservation and management measures shall apply, taking into account the biological characteristics of the stock(s) concerned and the nature of the fisheries involved;

(b) The area that will be covered, taking into account the relevant characteristics of the region, including socio-economic, geographical and environmental factors;

(c) The relationship of the new organization or agreement to the role, objectives and activities of any existing fisheries organizations or agreements;

(d) The mechanisms by which the organization or agreement will obtain scientific advice and review the status of the stock(s) in question, including, where appropriate, the establishment of a scientific advisory body;

(e) Mechanisms to ensure effective application of conservation and management measures.

## Article 13

### Role of regional fisheries management organizations and agreements

Coastal States and States fishing on the high seas which participate in a regional or subregional fisheries management organization or agreement, when fulfilling their obligation to cooperate in the formulation of conservation and management measures to be applied to straddling fish stocks and highly migratory fish stocks on the high seas, shall:

(a) Establish, as appropriate, quota allocations or limits on fishing effort;

(b) Adopt and apply international minimum standards for conducting fishing operations in a responsible manner;

(c) Establish agreed standards for the collection, reporting, verification and exchange of data and information on fisheries for the stock(s) in question;

(d) Compile and disseminate complete and accurate statistical data, as described in annex II, relating to catch of targeted stock(s) and by-catch, and any other relevant information necessary to ensure that the best scientific evidence is available, (while maintaining confidentiality where appropriate);

(e) Conduct and disseminate the results of scientific analysis of data on stocks(s) and carry out scientific research on relevant factors, including environmental and oceanographic factors;

(f) Establish appropriate cooperation mechanisms for effective monitoring, control, surveillance and enforcement;

(g) Develop and use environmentally safe and cost-effective fishing techniques in order to minimize pollution, waste, discards and by-catch of untargeted species, in particular endangered species, taking into account the need to protect biodiversity;

(h) Agree on the means by which the activities of the organization or agreement will be financed, bearing in mind the relative benefits derived from the fisheries and different capacities of countries, especially developing coastal States, to provide financial and other contributions;

(i) Agree on measures consistent with international law to deter non-parties from undermining the effectiveness of conservation and management measures established by the organization or agreement;

(j) Agree on means by which the fishing interests of new participants will be accommodated, having regard to the interests of both new and existing participants, their contributions to conservation and management of stock(s), the status of the stock(s) in question and the special requirements of new participants from developing countries of the same region or subregion;

(k) Agree on decision-making processes which facilitate the timely and effective determination of conservation and management measures;

(l) Establish procedures for compulsory settlement of disputes concerning conservation and management measures, consistent with the relevant provisions of the United Nations Convention on the Law of the Sea. Procedures for settlement of disputes shall be applicable to all members of the organization or parties to the agreement, including non-parties to the Convention;

(m) Consult, cooperate and coordinate, as appropriate, with other relevant fisheries organizations and agreements;

(n) Establish procedures for reviewing periodically the effectiveness of the organization or agreement;

(o) Apply, as appropriate, the other measures for conservation and management referred to in article 5 of this Convention.

Article 14

New participants

The participation of new members in a regional fisheries management organization or agreement shall be subject to the conditions established by that organization or agreement, taking into account the following:

(i) The status of the stock(s) in question and the existing level of fishing effort, which may require the establishment of a waiting period, assignment of allocations, *only when the total allowable catch exceeds a threshold, or, when there is no margin for new allocations, relinquishment of part of their quotas by existing participants;*

(ii) Preference in access for coastal States in the vicinity of whose exclusive economic zones straddling fish stocks or highly migratory fish stocks that are present both in these zones and in the adjacent areas of the high seas are exploited; and, particularly among those States, for developing countries, especially those that depend economically, socially or culturally on marine resources;

(iii) The contribution to conservation and management of the stock(s) in question, to the collection and provision of accurate data and to the conduct of scientific research on such stock(s) made by the new participants prior to becoming members of the organization or parties to the agreement;

(iv) The traditional fishing patterns of the new participants;

(v) The interests of existing participants whose coastal communities are dependent on fishing for the stock(s) in question.

Article 15

Strengthening of existing mechanisms for cooperation

States Parties shall cooperate to strengthen existing regional and subregional fisheries management organizations and agreements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 16

Application of existing international agreements

In implementing the provisions of articles 8 to 13, States parties shall give effect, at the regional level, to the relevant provisions of the United Nations Convention on the Law of the Sea and other international agreements consistent with the Convention concerning the conservation and management of straddling fish stocks and highly migratory fish stocks.

Article 17

Enclosed and semi-enclosed seas

In establishing a regional fisheries management organization or agreement in respect of an enclosed or semi-enclosed sea, States Parties shall comply with the provisions of article 123 of the United Nations Convention on the Law of the Sea.

Article 18

Transparency

Regional fisheries management organizations shall be transparent. Representatives from other intergovernmental and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to participate in meetings of such bodies as observers or otherwise, as appropriate.

Article 19

Obligations of non-parties

1. States that are not members of a regional fisheries management organization or agreement shall ensure that the vessels entitled to fly their flag do not fish contrary to the terms of the conservation and management regime established by that organization or agreement. A non-party shall not issue a licence or permit to its vessels to fish within the regulatory area.

2. Where a State does not participate in the work carried out through a subregional or regional fisheries management organization or agreement, that State shall not be exempt from the obligation to cooperate in the conservation and management of the regulated stocks.

Article 20

Coordination for compliance by non-parties

1. States that are members of or participate in a regional fisheries management organization or agreement shall exchange information with respect to the activities of fishing vessels flying the flags of non-parties that undermine the effectiveness of conservation and management measures established by the organization or agreement.

2. States shall cooperate in a manner consistent with international law to ensure that fishing vessels entitled to fly the flags of non-parties do not engage in activities that undermine the effectiveness of relevant international conservation and management measures.

## PART IV

## RESPONSIBILITIES OF THE FLAG STATE

### Article 21

### General obligation to cooperate

Flag States whose vessels fish on the high seas shall take the necessary measures to ensure that their vessels comply with regional or subregional fisheries conservation and management measures. To this end, they shall cooperate in effective monitoring, control and surveillance of fishing vessels, fishing operations and related activities, either bilaterally or through regional fisheries management organizations or agreements.

### Article 22

### Control of the vessels of the flag State

In order to carry out effectively their responsibilities under the present Convention, States Parties shall exercise control over the vessels that fly their flag, by means of legal and administrative provisions, and in conformity with the established procedures in regional, subregional or global agreements, including:

(a) The establishment of a system of licences, authorizations, permits and requirements for fishing on the high seas;

(b) National legislation to prohibit fishing by vessels that operate without a fishing licence, authorization or permit, or that do so without being duly recorded in the corresponding national, regional or global registers;

(c) The requirement that vessels must carry the licence, authorization or permit on board at all times and must produce such licence, authorization or permit on demand by an authorized observer or inspector;

(d) The requirement that information contained in a licence, authorization or permit is sufficient to fulfil any obligations of the flag State established by subregional, regional or global agreements;

*(e) Measures to prohibit vessels entitled to fly their flag, while fishing on the high seas, from engaging in any activity that undermines the effectiveness of international conservation and management measures;*

*(f) Measures to prohibit such vessels, while fishing in an area of the high seas adjacent to the exclusive economic zone of a State, from operating in that zone in contravention of the laws and regulations of the coastal State.*

Article 23

Monitoring, surveillance and control measures

1. States Parties shall adopt effective monitoring, surveillance and control measures to ensure that the vessels entitled to fly their flag comply with the fisheries conservation and management measures established under this Convention. To that end, and subject to the particularities of each region, they shall consider among those measures:

(a) Implementation of quotas and other control measures adopted in accordance with subregional or regional agreements;

(b) Establishment of a national register of fishing vessels incorporating information on vessels entitled to fly their flag and authorized to fish on the high seas;

(c) Compliance with the requirements of regional or global registers by vessels fishing or authorized to fish on the high seas;

(d) Requirements for marking fishing vessels and gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems such as the FAO Standard Specifications for the Marking of Fishing Vessels;

(e) Requirements for catch verification and validation through agreed observer programmes, inspection schemes, unloading reports, supervision of transshipment, dockside monitoring and monitoring of landed catches and market statistics;

(f) Implementation of national and regionally agreed inspection schemes, including requirements for vessels flying their flag to permit access by inspectors from other States in the region or subregion. Detailed requirements for inspection schemes must include the requirement for vessel operators to allow any authorized person(s) to board vessels and carry out the duties agreed under the scheme;

(g) Implementation of nationally and regionally agreed observer programmes, including requirements for vessels flying their flag to permit access by observers from other States in the region or subregion. Detailed requirements for observer programmes must include requirements for vessel operators to allow observers to board vessels and carry out the functions agreed under the programme;

(h) Installation and use of satellite transmitter equipment (vessel monitoring systems) in accordance with national and regionally integrated systems;

(i) Regulation of transshipment on the high seas to ensure that regionally agreed monitoring, control and surveillance measures are not undermined;

(j) Measures to implement, for vessels flying their flag, subregional, regional or global standards for collection of catch, effort and other relevant fisheries data in the agreed format and time-frame;

(k) Obligation to ensure compliance with international minimum standards for responsible fishing practices;

(l) Education and information programmes to ensure that their nationals understand the provisions of, and basis for, conservation and management measures.

2. With respect to the measures referred to in paragraph 1, subparagraphs (f) and (g), the flag State shall reach agreement with the relevant coastal State in order to provide the necessary facilities to the inspectors and observers of that State for the exercise of their functions and reduce to a minimum the expenses involved.

Article 24

Supplementation through regional agreements

The responsibilities of flag States referred to in article 22 shall be supplemented by regionally agreed systems of monitoring, control and surveillance, including vessel monitoring systems (VMS). Where there is a regionally agreed system of monitoring, control and surveillance in effect, flag States should ensure that the measures they impose are compatible with that system.

**PART V**

**COMPLIANCE AND ENFORCEMENT OF CONSERVATION AND MANAGEMENT MEASURES**

Article 25

Compliance and enforcement by flag States

In order to ensure compliance with subregionally, regionally or globally agreed measures, rules and regulations for the fishing of straddling fish stocks and highly migratory fish stocks on the high seas, States Parties shall:

(a) Adopt legislation and administrative measures to ensure that vessels flying their flag comply with agreed conservation and management measures for the relevant fish stocks;

(b) Provide whatever is necessary for the effective enforcement of such measures, rules and standards wherever violations occur;

(c) Ensure that vessels flying their flag are prohibited from fishing on the high seas when they have committed a serious breach of agreed conservation and management measures or of other international rules and standards;

(d) Prevent, through all means at their disposal, including the elimination of financial incentives, *the flagging or reflagging of fishing vessels for the purpose of avoiding compliance with international conservation and management measures;*

(e) Investigate immediately any alleged violation of agreed management measures, including the physical inspection of the vessel(s) concerned;

(f) Make every effort to investigate alleged violations fully and adequately and report promptly to the aggrieved State and the relevant subregional, regional or international organization on the progress and outcome of the investigation. Investigations may be undertaken directly, in cooperation with other concerned State(s), or through the relevant subregional or regional fisheries management organization or agreement. Information on the progress and outcome of the investigations should be provided to all interested States;

(g) Require any vessel flying their flag to provide information regarding catches, activities and fishing operations in the area of an alleged violation, where there are grounds for believing that the vessel has committed such a violation.

## Article 26

### International cooperation for the coordination of investigations

1. A flag State conducting an investigation of an alleged violation may request the assistance of any other State whose cooperation may assist in clarifying the circumstances of the case. All States shall endeavour to meet reasonable requests made by the flag State in connection with such assistance.

2. If a flag State is satisfied that there is sufficient evidence to enable proceedings to be brought in respect of the alleged violation, the flag State should, without delay, institute such proceedings in accordance with its laws and, where appropriate, detain the vessel(s) in question.

3. *States shall assist each other, on the basis of information to which they have access, in identifying vessels reported to have engaged in activities that undermine the effectiveness of international conservation and management measures.*

4. *States shall establish effective arrangements for obtaining and transmitting to prosecuting authorities any evidence to which they have access.*

5. *Upon request of a port State, States shall provide any information to which they have access regarding the violations committed and any reasonable assistance which they are able to provide in relation to investigation and enforcement measures.*

## Article 27

### Compliance and enforcement by regional fisheries management organizations or agreements

A flag State shall cooperate with relevant coastal States and through regional fisheries management organizations or agreements in developing regionally agreed procedures for the conduct of fisheries surveillance and law enforcement. Where appropriate, fisheries surveillance shall be conducted in accordance with such regionally agreed procedures. Within regions or subregions, States shall cooperate in the enforcement of their fisheries laws and regulations, including specific agreements for that purpose. To this end, States shall agree, inter alia, on procedures under which the appropriate authorities of one State may board, inspect and, where appropriate, detain a fishing vessel entitled to fly the flag of another State, including the notification requirements for such action and the procedures under which one State might detain the vessel of another State.

## Article 28

### Cooperative action against vessels committing violations

States Parties within a region or subregion shall be entitled to take cooperative action to prevent vessels which have violated internationally agreed management measures, rules or standards from fishing in that region or subregion until such time as corrective action is taken by the flag State. Such action may include, inter alia, the temporary removal of the offending vessel from the register of fishing vessels authorized to fish in the region or subregion.

## Article 29

### Enforcement against unregistered vessels

When an unregistered fishing vessel is sighted operating in a regulated fishery, the competent authorities of a State may take such action as is necessary to detain and, if warranted, prosecute the vessel. The arresting State shall detain the crew only for the period necessary to bring the vessel in custody to the nearest port of the State and to complete its investigations. It shall expeditiously carry out all investigations and judicial proceedings. It shall, as soon as practicable, inform the State or States of which the crew are nationals of the action taken.

## Article 30

### Enforcement against vessels that conceal their identification

When a fishing vessel conceals its identification or indicates a register to which it does not belong, a State may take such action as is necessary to

board, inspect and, if appropriate, detain the vessel. It shall, as soon as practicable, inform the State or States where the vessel is registered of the action taken. The arresting State may detain the vessel for such reasonable period as is necessary for the flag State to take control of it for enforcement purposes. The arresting State may, with the agreement of the flag State, take other appropriate action.

Article 31

Port State enforcement

1. A port State shall take, in accordance with international law, such measures as are necessary to ensure the effectiveness of international conservation and management measures. To this end, a port State may inspect documents and catch on board fishing vessels in its ports and offshore terminals and may deny access to these facilities. A port State may also carry out such inspections at the request of another State in order to assist such other State in enforcement of its laws.

2. Where such inspection or other evidence discloses clear and reasonable grounds for believing that the vessel has contravened or otherwise undermined international conservation and management measures or has fished on the high seas without an authorization, licence or permit, the port State shall inform the flag State and the requesting State, if any. Regional fisheries management organizations or agreements shall confer on port States the authority to detain vessels for such reasonable period as is necessary for the flag State to take control of the vessels for enforcement purposes. If the port State detains a vessel for this purpose it shall promptly inform the flag State. The State detaining the vessel may, with the agreement of the flag State, take other appropriate action.

Article 32

*Information on disposition of cases*

*Where, pursuant to articles 26, 28 and 29, the arresting State has delivered the detained vessel to the flag State, the latter State shall inform the former, within 12 months of such delivery and every six months thereafter, of the action taken in respect of that vessel until final disposition of the matter.*

Article 33

Application of penalties

1. All States shall adopt legal and administrative measures to ensure that their nationals, including owners, charterers, captains and fishing masters, comply with agreed conservation and management measures and other international rules and standards. Such measures shall consist of *compliance action (such as directives, warnings, injunctions and orders)* and punitive measures (*penalties*),

which, depending on the nature and gravity of the offence, may include *fines proportionate to the value of the fishing vessel* and to the profits derived from the illegal activity, *seizure or forfeiture of the catch, fishing gear or vessel, and the suspension or cancellation of licences* and authorizations to serve as captains or fishing masters on vessels fishing on the high seas.

2. Procedures for prosecuting violators shall be as expeditious as possible. The penalties applicable must be of sufficient gravity and of a sufficiently deterrent nature to secure compliance with international measures, rules and standards, and must deprive offenders of the profits derived from their illegal activities.

3. Where the offences committed have resulted in damage or loss to one or more States, the penalties applied by the flag State shall include compensation for such damage or loss.

## PART VI

## SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

### Article 34

### Recognition of the special requirements of developing countries

1. In exercising their rights and fulfilling their responsibilities with regard to straddling fish stocks and highly migratory fish stocks on the high seas, States Parties shall give full recognition to the special requirements of developing countries. In this regard, States shall cooperate, at a global, regional, subregional or bilateral level and, as appropriate, through subregional, regional and global organizations, especially FAO, to provide assistance to developing countries.

2. States shall take into account requirements including:

(i) The vulnerability of developing countries, particularly small island developing countries or other countries whose geographical situation or environment makes them dependent upon living marine resources, especially in terms of the impact on subsistence fisheries and the nutritional requirements of their coastal populations;

(ii) The need for effective assistance, including financial, scientific and technological assistance and training, so that developing countries can fulfil their obligations with respect to the conservation and management of straddling fish stocks and highly migratory fish stocks.

## Article 35

### Forms of cooperation with developing countries

Special forms of cooperation with developing countries for the purposes set out in this part shall include, inter alia, financial assistance, assistance relating to human resources development, scientific assistance, technical assistance, transfer of technology, including joint venture arrangements, and appropriate advisory and consultative services. Assistance should be directed to the following areas:

(a) Collection, reporting, verification and exchange of data and information on fishing activities and related issues;

(b) Stock assessment and scientific research;

(c) Application of effective conservation and management methods;

(d) Monitoring, control, surveillance and enforcement, including training and capacity-building at the local level, the development and funding of national and regional observer programmes and access to technology and equipment;

(e) Access to dispute settlement mechanisms within the framework of regional and subregional agreements;

(f) Greater participation of developing countries in fisheries for straddling fish stocks and highly migratory fish stocks.

## Article 36

### Special assistance for fisheries development

1. States Parties shall cooperate to enhance the ability of developing countries to conserve, manage and develop their own national fisheries for straddling fish stocks and highly migratory fish stocks on the high seas and in areas under national jurisdiction. Such cooperation shall take the form of special assistance to developing countries, including allowing for favourable access for developing countries to high seas areas adjacent to their exclusive economic zones to enable them to participate in fishing for straddling fish stocks and highly migratory fish stocks on the high seas.

2. States and international organizations shall assist developing countries in establishing new fisheries organizations or strengthening existing organizations concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks.

Article 37

Cooperation funds

States Parties shall cooperate to establish, through the competent subregional, regional or global organizations, as appropriate, funds to enable developing countries to meet the costs involved in any dispute settlement proceedings to which they may be parties.

**PART VII**

**COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCK**

Article 38

Coordination of measures applicable on the high seas and those applicable in areas under national jurisdiction

1. States fishing straddling fish stocks and highly migratory fish stocks in areas of the high seas adjacent to areas under the jurisdiction of coastal States shall cooperate with those States, either directly or through regional fisheries management organizations or agreements, in complying with conservation measures aimed at ensuring the long-term sustainability and optimum utilization of such stocks.

2. To this end, States fishing on the high seas and coastal States shall undertake the necessary coordination to ensure that the conservation and management measures applicable on the high seas are coherent and compatible with those established in respect of areas under national jurisdiction for the same stocks, such measures being based on the best scientific evidence available and having an equivalent effect.

3. The coordination referred to in paragraph 2 shall be without prejudice to the sovereign rights of coastal States for the purpose of exploring, exploiting, managing and conserving living marine resources within areas under national jurisdiction, exercised in accordance with the United Nations Convention on the Law of the Sea.

Article 39

Minimum conservation and management standards applicable on the high seas

In determining conservation and management measures for straddling fish stocks and highly migratory fish stocks on the high seas, States Parties, either directly or through subregional or regional organizations or arrangements, shall:

(a) Ensure that the measures do not result in the direct or indirect transfer of a disproportionate burden of the need for conservation action onto the coastal State(s);

(b) Ensure that the measures do not have an undue harmful impact on the living marine resources within the areas of national jurisdiction;

(c) Ensure that the measures established in respect of the high seas are no less stringent than those adopted by coastal States in areas under their jurisdiction in respect of the same stock(s);

(d) Give due regard, in the interest of all States concerned, to:

(i) The measures taken or proposed by the coastal State(s) within areas under national jurisdiction;

(ii) The relevant dependence of the coastal State(s) and of the States fishing on the high seas on the stocks concerned;

(iii) The impact of high seas fishing on the stock(s) concerned and on associated and dependent species within the areas under national jurisdiction;

(iv) The particularities of the region and the biological characteristics of the stock(s) concerned.

## Article 40

## Ensuring equivalence of measures in areas under national jurisdiction

Where agreement is reached on conservation and management measures for the high seas that are more stringent than those applied by coastal States in areas under their jurisdiction in respect of the same stock(s), those States shall take all possible steps to ensure that the conservation measures applicable within their respective areas are equivalent in effect to the relevant measures applicable on the high seas.

## Article 41

## Measures to be applied in the absence of an agreement

If, in spite of the procedures outlined above, the States concerned are unable to agree on conservation and management measures for the high seas, States shall nevertheless continue their efforts to reach agreement, and States fishing on the high seas shall provisionally observe conservation and management measures equivalent in effect to those applying in respect of the same stock(s) in areas under national jurisdiction; and, in the absence of such measures, they shall observe minimum international standards or otherwise act in a manner

consistent with the duties imposed on States under the Convention until agreement is reached.

## PART VIII

## SETTLEMENT OF DISPUTES

### Article 42

### Prevention and settlement of disputes

1. All States shall cooperate in order to prevent disputes. To this end, they shall, in particular, agree on efficient and expeditious decision-making procedures within regional fisheries management organizations or agreements and strengthen existing decision-making procedures as necessary.

2. *In the event of a dispute concerning the interpretation or application of this Convention, the Parties concerned shall seek a settlement through negotiation, enquiry, mediation, conciliation or other peaceful means of their own choice.*

### Article 43

### Disputes of a technical nature

In the event of a dispute on a matter of a technical nature, the States concerned shall refer the matter to an ad hoc expert panel, which shall confer with the States to resolve the matter without recourse to formal dispute settlement procedures.

### Article 44

### Implementation of the United Nations Convention on the Law of the Sea

Where all parties to a dispute are parties to the United Nations Convention on the Law of the Sea, the dispute settlement procedures provided for in that Convention shall apply.

### Article 45

### Disputes within regional fisheries management organizations or agreements

1. States that participate in regional or subregional fisheries management organizations or agreements shall strengthen or adapt the dispute settlement procedures established by such organizations or agreements in order to achieve the timely and effective resolution of fisheries disputes. To this end, they

shall adopt and comply with procedures for compulsory recourse to binding settlement, such as the procedure set out in annex IV, for the expeditious settlement of disputes relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, including recourse to scientific or other expert advice or to an ad hoc expert panel, as necessary.

2. Where, within a reasonable period of time to be established by the regional organizations, no settlement has been reached by recourse to the above-mentioned procedures or to the compulsory procedures entailing binding decisions provided for in the United Nations Convention on the Law of the Sea, or in other instruments in force between them, the arbitration procedure described in annex IV to this Convention shall apply.

## Article 46

## Recourse for non-parties to a dispute settlement procedure established by a regional fisheries management organization or agreement

States that do not participate in a regional or subregional fisheries management organization or agreement may invoke or submit voluntarily to the dispute settlement procedure established by the organization or agreement. In that event, they shall be bound by the decision taken. States that participate in such organizations or agreements may submit to the above-mentioned procedure when it is invoked by non-participants.

## Article 47

## Impact on the rights specified in the United Nations Convention on the Law of the Sea

1. The application of the procedures set out in this part shall not prejudice the rights and duties of States specified in the United Nations Convention on the Law of the Sea, particularly the provisions of part XV thereof, concerning the settlement of disputes.

2. In no case shall those procedures be applied to disputes concerning the exercise of the sovereign rights of coastal States with regard to the exploration, exploitation, conservation or administration of the living resources within their exclusive economic zones. Such disputes may be submitted only to a conciliation commission, as provided for in annex V to that Convention.

## PART IX

## NON-PARTIES

### Article 48

### Invitation to participate

*States Parties shall encourage non-parties to this Convention to accede to it and to adopt laws and regulations consistent with its provisions.*

### Article 49

### Duty not to violate conservation and management measures

Non-parties shall refrain from fishing regulated stocks in any manner that undermines the effectiveness of the conservation and management measures established under this Convention.

### Article 50

### Cooperation among States Parties

States Parties shall exchange information with respect to activities of fishing vessels entitled to fly the flags of non-parties that are in violation of the international conservation and management measures established under this Convention and shall take any necessary action that is consistent with international law to prevent or halt such activities.

## PART X

## REVIEW OF THE IMPLEMENTATION OF CONSERVATION AND MANAGEMENT MEASURES

### Article 51

### Periodic review

States Parties and subregional and regional organizations and agreements concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks shall implement the provisions of this Convention on the basis of their capacities and the needs of the region. They shall report biennially to the Secretary-General of the United Nations, who shall submit a report to the General Assembly on a regular basis, taking into account information provided by FAO on the progress made in the implementation of the Convention and, where necessary, proposing means of strengthening the substance and methods of implementation of the provisions and measures of the Convention in order to address any continuing problems in fisheries for these stocks.

## PART XI

## FINAL PROVISIONS

### Article 52

### Signature

This Convention shall be open for signature, at United Nations Headquarters in New York, by States, self-governing associated States and self-governing territories and by the international organizations referred to in article 1, paragraph 1 (ix), for a period of 24 months from the date of the closing meeting of the Conference which drafted it.

### Article 53

### Ratification and formal confirmation

This Convention shall be subject to ratification by States, self-governing associated States and self-governing territories and to formal confirmation by international organizations. The instruments of ratification and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

### Article 54

### Accession

This Convention shall remain open for accession by States and the other entities referred to in article 52. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### Article 55

### Entry into force

1. This Convention shall enter into force 12 months after the date of deposit of the fortieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the fortieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession, subject to paragraph 1.

Article 56

Reservations and exceptions

No reservations or exceptions may be made to this Convention.

Article 57

Declarations and statements

Article 56 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its domestic law with the provisions of the Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.

Article 58

Relation to other conventions and international agreements

1. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with it and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

2. Two or more States Parties may conclude agreements, applicable solely to their mutual relations, modifying or suspending the operation of provisions of this Convention, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements do not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties, through the depositary of the Convention, of their intention to conclude the agreement and of the modification or suspension for which it provides.

Article 59

Amendment

1. After the expiry of a period of five years from the date of entry into force of this Convention, a State Party may, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, and request the convening of a conference to consider such

proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference shall be the same as that applicable at the Conference that has elaborated this Convention, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus, and there should be no voting on them until all efforts at consensus have been exhausted.

## Article 60

## Amendment by simplified procedure

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Convention to be adopted by the simplified procedure set forth in this article, without convening a conference. The Secretary-General shall circulate the communication to all States Parties.

2. If, within a period of six months from the date of circulation of the communication, a State Party objects to the proposed amendment or to the proposal for its adoption by the simplified procedure, the amendment shall be considered rejected. The Secretary-General shall immediately notify all States Parties accordingly.

3. If, six months from the date of circulation of the communication, no State Party has objected to the proposed amendment, it shall be considered adopted. The Secretary-General shall notify all States Parties that the proposed amendment has been adopted.

## Article 61

## Signature, ratification of, accession to and authentic texts of amendments

1. Once adopted, amendments to this Convention shall be open for signature by States Parties, at United Nations Headquarters in New York, for six months from the date of adoption, unless otherwise provided in the amendment itself.

2. Articles 53, 54 and 65 shall apply to all amendments to this Convention.

## Article 62

### Entry into force of amendments

1. Amendments to this Convention shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties or by 40 States Parties, whichever is greater. Such amendments shall not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

2. An amendment may provide that a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

3. For each State Party ratifying or acceding to an amendment referred to in paragraph 1 after the deposit of the required number of instruments of ratification or accession, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

4. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 1 shall, failing an expression of a different intention by that State:

(a) Be considered a Party to this Convention as so amended; and

(b) Be considered a Party to the unamended Convention in relation to any State Party not bound by the amendment.

## Article 63

### Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Convention and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation or legal situation of that State created through the execution of this Convention prior to its termination for that State.

3. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of this Convention.

## Article 64

### Status of annexes

The annexes form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention or to one of its parts includes a reference to the annexes relating thereto.

## Article 65

### Depositary

1. The Secretary-General of the United Nations shall be the depositary of this Convention and amendments thereto.

2. In addition to his functions as depositary, the Secretary-General shall:

(a) Report to all States Parties and competent international organizations on issues of a general nature that have arisen with respect to this Convention;

(b) Notify States Parties of agreements concluded under article 58, paragraph 3;

(c) Circulate amendments adopted in accordance with this Convention to States Parties for ratification or accession;

(d) Convene necessary meetings of States Parties in accordance with this Convention.

## Article 66

### Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall, subject to article 51, be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE AT NEW YORK, on ...

## *ANNEX I*

## *LIST OF HIGHLY MIGRATORY FISH STOCKS*

1. *Albacore tuna: Thunnus alalunga.*

2. *Bluefin tuna: Thunnus thynnus.*

3. *Bigeye tuna: Thunnus obesus.*

4. *Skipjack tuna: Katsuwonus pelamis.*

5. *Yellowfin tuna: Thunnus albacares.*

6. *Blackfin tuna: Thunnus atlanticus.*

7. *Little tuna: Euthynnus alletteratus; Euthynnus affinis.*

8. *Southern bluefin tuna: Thunnus maccoyii.*

9. *Frigate mackerel: Auxis thazard; Auxis rochei.*

10. *Pomfrets: Family Bramidae.*

11. *Marlins: Tetrapturus angustirostris; Tetrapturus belone; Tetrapturus pfluegeri; Tetrapturus albidus; Tetrapturus audax; Tetrapturus georgei; Makaira mazara; Makaira indica; Makaira nigricans.*

12. *Sail-fishes: Istiophorus platypterus; Istiophorus albicans.*

13. *Swordfish: Xiphias gladius.*

14. *Sauries: Scomberesox saurus; Cololabis saira; Cololabis adocetus; Scomberesox saurus scombroides.*

15. *Dolphin: Coryphaena hippurus; Coryphaena equiselis.*

16. *Oceanic sharks: Hexanchus griseus; Cetorhinus maximus; Family Alopiidae; Rhincodon typus; Family Carcharhinidae; Family Sphyrnidae; Family Isuridae.*

## ANNEX II

## MINIMUM DATA REQUIREMENTS FOR THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

A. Specification of the data

With a view to ensuring an exact and timely evaluation of the situation of straddling fish stocks and highly migratory fish stocks, both on the high seas and in the zones under national jurisdiction, so that the most appropriate conservation and management measures can be adopted, States Parties shall cooperate in the collection, processing and dissemination of the following data:

**1. Scientific data**

(i) Delimitation of the range of distribution of straddling fish stocks and highly migratory fish stocks;

(ii) Structure, migration and interaction of those stocks, their abundance and reproduction rates and other relevant data related to their life cycles;

(iii) Length, weight and sex composition of the catch, where agreed;

(iv) Biological parameters supporting stock assessments and other relevant research on abundance, biology, biometry, ecology, fisheries and stock dynamics, including surveys of biomass, hydro-acoustic surveys, research on the functioning of ecosystems and on other oceanographic and environmental factors that affect abundance, spawning and reproduction of stocks, and on the bio-economic interactions of fisheries.

**2. Technical data**

(i) Identification, flag and port of registry of the fishing vessels authorized to fish straddling fish stocks and highly migratory fish stocks;

(ii) Fishing vessel type and specifications (e.g., construction material, date built, registered length, gross registered tonnage, power of main engine(s), hold capacity, catch storage methods, number of crew);

(iii) Fishing method and gear description (e.g., type, amount and specifications);

(iv) Systems of navigation and position-fixing aids and of aids for the surveillance of fisheries (e.g., by means of boosters connected by satellite to databases on land or other communications devices);

(v) Range and location of fishing operations and other potentially relevant data on the dynamics and seasonal and spatial strategies of fishing fleets.

3. **Statistical data**

(i) Time series of historical catch and effort statistics by fleet from the start of the fishery;

(ii) Total catch in number and/or nominal weight, according to models defined by FAO as conversion factors (such as landings + losses due to dressing, handling and processing - gains prior to landings); and broken down by area, by fishing method, by species of targeted, non-targeted and discarded species, including non-fish species, as is appropriate to each fishery;

(iii) Fishing location, date and time, and other statistics on fishing methods as appropriate;

(iv) Other potentially useful statistical data on fishing effort and on transshipments, landings and commercialization.

B. Data reporting

States that fish straddling fish stocks and highly migratory fish stocks on the high seas shall ensure that fishing vessels entitled to fly their flag send to their own authorities - and, when fishing in areas adjacent to the exclusive economic zones of another State, to the competent authorities of the latter - and to the regional fisheries management organizations or agreements:

(i) Catch and effort log books, including relevant data on fishing operations;

(ii) Catch and effort reports by radio, telex, facsimile or satellite transmission;

(iii) Reports on possible entry into or exit from an exclusive economic zone.

C. Data verification

States Parties shall cooperate directly and through regional fisheries management organizations or agreements in verifying the position point by means of satellite transmission devices, and in checking the effort, catch composition and amount and other details of fishing operations, through scientific observation programmes and trip, transshipment, landings and port sampling reports if necessary.

D. Assistance to developing countries

In accordance with the provisions of part VI of this Convention, financial, scientific and technological assistance and training shall be provided to developing State Parties for the purpose of enhancing their capabilities with respect to data collection, evaluation and exchange, participation in research programmes and access to appropriate technology.

## ANNEX III

## ADDITIONAL PRECAUTIONARY MEASURES

A. *Newly discovered stocks*

1. (a) At the outset of the development of a fishery directed at a newly discovered stock, to provide for effective scientific review and assessment, and to avoid delays in establishing effective control, the coastal States in whose exclusive economic zones the stock occurs may assume management authority for an initial interim period. These coastal States shall, immediately following the assumption of this authority, convene a meeting of all interested States that have fished in the region without undermining the effectiveness of international conservation and management measures, to consult on the interim catch and effort levels of the fishing activities to be conducted during the interim period, and to consult on the States that will participate in the fishery under the authority of these coastal States, appropriate interim management and conservation measures, and the fisheries research to be undertaken.

(b) When the initial interim period has terminated, the management of the fishery will become subject to the authority of the relevant regional fisheries conservation organization or agreement or, where no appropriate organization or agreement exists, shall be the subject of consultation between the above-mentioned coastal States and other States interested in participating in the fishery.

2. Early large-scale fisheries on newly discovered stocks shall be prohibited.

3. Effort limits shall be applied immediately to the new fishery.

4. Controls shall be established on government assistance and licensing to avoid sudden large-scale development of the fishery.

5. Following the initial interim period of the fishery:

(a) Measures shall be established to provide for gradual development of the new fishery;

(b) Precautionary total allowable catches (TACs) and quotas shall be established as scientific information is developed; TACs shall be established below the levels estimated to be the maximum sustainable yield (MSY) or in accordance with management procedures which lead towards biomass levels which can produce the maximum sustainable yield;

(c) Precautionary management thresholds shall be established, at which previously determined management action will be taken automatically to avoid delays in decision-making;

(d) By-catch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of

*associated or dependent species above levels at which their reproduction may become seriously threatened.*

*B. Existing fisheries*

*1. In fisheries for which scientific information is available for the setting of TACs, the TACs shall be established below the level of MSY or, if the population is below that required for traditional levels which can produce the MSY, the TAC shall be established at a level that allows the stock to rebuild.*

*2. Effort limits shall be established to restrain catches within TAC and quota limits or, in the absence of such limits, as independent management measures.*

*3. Precautionary management thresholds shall be established at which previously determined management action will be taken automatically to avoid delays in decision-making.*

*4. Threshold TACs shall be established below which moratoria shall be automatically applied.*

*5. In cases where catch levels, catch rates or fish sizes decline over time, TACs and effort shall be reduced to levels aimed at arresting the decline, and any subsidies for fishing operations shall be suspended.*

*6. By-catch limits shall be established to prevent the overfishing of limits set for stocks subject to TACs and to maintain or restore stocks of associated or dependent species above levels at which their reproduction may become seriously threatened.*

*7. In fisheries where catches are not limited by either TAC or effort limits, controls shall be established on government assistance and licensing to avoid sudden large-scale development of the fishery.*

*8. For straddling stocks, in cases where the coastal State determines that an emergency exists, the emergency measures prescribed by the coastal State shall apply for a reasonable period, during which the coastal State and the other interested States shall consult, directly or through the relevant regional organizations or agreements, on the measures to be applied following the prescribed period.*

*9. For highly migratory stocks, in cases where a majority of the coastal States through whose waters the stocks migrate determine that an emergency exists, the emergency measures prescribed by the majority of the coastal States shall apply for a reasonable period, during which the coastal States and other interested States shall consult, directly or through the relevant regional organizations or agreements, on the measures to be applied following the prescribed period.*

## ANNEX IV

## ARBITRATION

A. Institution of proceedings

1. Any party to a dispute may submit the dispute to arbitration by written notification addressed to the Secretary-General of the United Nations, who shall notify the other party or parties to the dispute and constitute an arbitral tribunal as set out herein. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

B. Constitution of arbitral tribunal

2. The arbitral tribunal shall, unless the parties to the dispute agree otherwise, be constituted as follows:

(i) The arbitral tribunal shall consist of three members, subject to subparagraph (vi) below;

(ii) The party instituting the proceedings shall appoint one member, who may be its national. The appointment shall be included in the notification referred to in paragraph 1 above;

(iii) The other party to the dispute shall, within 10 days of receipt of the notification, appoint one member, who may be its national. If the appointment is not made within this period, the Secretary-General shall make the appointment within a further 10 days;

(iv) The two members thus appointed shall select, by mutual agreement, the third member, who shall be the chairman. Failing agreement, the Secretary-General shall make the appointment within 10 days. The chairman shall be a national of a third State;

(v) Any vacancy shall be filled in the manner described for the initial appointment;

(vi) Parties to the dispute with the same interest shall appoint one member of the tribunal jointly and by agreement. Where there are several parties to the dispute having separate interests, or where there is disagreement on whether they have the same interest, the Secretary-General shall appoint one member of the tribunal after consultation with the parties.

C. Submission of memoranda

3. Within 10 days of the constitution of the tribunal, the parties concerned shall file a memorandum with the tribunal, copies of which shall be transmitted to all parties.

D. Hearings

4. A hearing shall be convened at a place and on a date to be determined by the tribunal, within 30 days following its constitution.

E. Procedure

5. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall determine its own procedures, assuring to each party full opportunity to be heard and to present its case.

F. Duties of parties to a dispute

6. The parties to the dispute shall facilitate the work of the arbitral tribunal.

G. Expenses

7. Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

H. Required majority for decision

8. Any decision of the arbitral tribunal shall be taken by a majority of its members.

I. Default of appearance

9. If one of the parties to a dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

J. Verification of the competence and grounds of the claim

10. Before making its award, the arbitral tribunal must satisfy itself, not only that it has jurisdiction over the dispute, but also that the claim is well grounded in fact and in law.

K. Provisional measures

11. The tribunal may prescribe provisional measures which it considers appropriate under the circumstances to preserve the rights of the parties or to prevent damage to the stock(s) in question, pending the final decision.

L. Award

12. The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. The tribunal shall communicate its decision in writing to all parties within 30 days of the end of

the hearing. Reasons shall be communicated in writing to the parties within 60 days of the decision.

M. Finality of award

13. The award shall be final and without appeal. It shall be complied with by the parties to the dispute.

N. Interpretation or implementation of the award

14. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award.

O. Application to entities

15. The provisions of the present annex shall apply, mutatis mutandis, to any dispute involving any entities to the dispute.

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